

Conditions of Engagement

1.0 The Commissioned Work

The commission and brief shall be confirmed in writing before proceeding, the services and fees being stated, together with an estimate of cost for various stages. No Commissioned Work will be commenced without written agreement. Each stage of the Commissioned Work shall be deemed accepted by the Client at the commencement of the next stage unless notified in writing prior to the commencement of the next stage.

The Commissioned Work shall be deemed complete and accepted by the Client and all obligations of the Design Office shall be fulfilled by mutual agreement or no later than the start of manufacture of the product and/or production of the Commissioned Work.

2.0 Duties of the Design Office

The Design Office undertakes to abide by the Code of Professional Conduct of the Chartered Society of Designers. When working abroad, the Design Office will observe the rules of professional conduct of the representative professional association in the country concerned.

The Design Office undertakes not to disclose any confidential information obtained from the Client concerning the business methods, know-how and affairs of the Client without the Client's prior approval. The Design Office shall ensure that its staff and any sub-contractor involved in the commission shall be bound by the same conditions of confidentiality.

3.0 Duties of the Client

The Client undertakes to offer its full co-operation to the Design Office for the execution of the Commissioned Work, supplying at any time all technical specifications and information requested by the Design Office for the completion of the Commissioned Work, including but not limited to all previous relevant project developments and programs with regard to the Commissioned Work.

4.0 Payment

The Design Office shall be paid such a fee or fees in such currency as may have been agreed (including where relevant VAT or other statutory additions) together with all related royalties, costs and expenses. All moneys due shall be paid within forty-five (45) days of receipt of invoice. Invoices will be submitted by the Design Office at the end of each calendar month for the Commissioned Work carried out during that month, or at set stages in the Commissioned Work as agreed in advance.

The Design Office shall be entitled to charge interest at a cumulative rate of 4% per annum above UK HSBC base rate on all sums due and in respect of each calendar month after such sums have become due and payable.

5.0 Expenses

In addition to fees, the Design Office shall be reimbursed at cost for all reasonable out-of-pocket expenses (whether by the design office or by any other person engaged on the commission) actually and properly incurred in the execution of the commission. Such expenses will include but without limitation hotel, subsistence and travelling expenses, use of car, telephone and facsimile charges, courier services etc. The Design Office shall promptly communicate statements of the above-referred expenses to the Client, which shall be considered approved and accepted for payment 15 days after the receipt thereof.

6.0 Costs

Costs incurred by the Design Office for such item as prints and other reproductions of drawings, typesetting, the provision of models, prototypes etc. furnished at the Client's request or with the Client's approval (unless they comprise the design proposal and are included in a fixed fee agreement) shall be charged separately. The Design Office is entitled to add a handling fee for this service.

7.0 Non-payment

Until all fees costs and expenses have been paid the title of and ownership in all physical and digital material produced by the Design Office (including but without limitation sketches, drawings, models of prototypes) shall remain with the Design Office who shall be entitled to enter the premises of the Client and recover all such material if any fees, costs or expenses remain unpaid (whether wholly or in part) after they have become due to be paid, provided the Client is first provided with notice of non-payment, reasonable opportunity to make payment and has failed to do so.

8.o Documents

The Design Office shall be entitled to one final model, sample of the prototype, photographs of models, samples and prototypes, brochure of models, samples or prototypes in a reasonable quantity sufficient for an adequate documentation of the Commissioned Work.

9.o Use of Work

The design or other work carried out in accordance with the Commissioned Work shall not be used for any other purposes other than that for which it was commissioned (without the prior written approval of the Design Office). In no circumstances may any Commissioned Work in rough or incomplete form be used or published as finished Commissioned Work without the prior written approval of the Design Office and then only in terms prescribed and agreed by the Design Office.

The Design Office shall at all times be entitled to use for the purposes of promotion any of the Commissioned Work or any description or illustration of the Commissioned Work (even if the intellectual property rights have been assigned to the Client).

10.o Modifications

No modification or alterations to any designs or other work created as a result of the Commissioned Work may be made without the consent of the Design Office, which consent shall not be unreasonably withheld, conditioned or delayed. Any agreed modifications or alterations shall only be carried out by or under the supervision of the Design Office and shall be paid for at a rate agreed with the Design Office in advance.

11.o Intellectual Property Rights

All intellectual property rights arising in all or any of the Commissioned Work created by the Design Office are and shall remain the property of the Design Office.

12.o License

The parties will execute an Exclusive License Agreement, whereby the Design Office will grant to the Client a license for the manufacturing, sale and distribution of the products ("Products") manufactured utilizing the intellectual property upon agreement of the terms, conditions and the payment of royalties. The license granted includes the right to manufacture, sell and distribute the Products; manufacturing, sale and distribution of the Products shall be carried out by the Client or its affiliated, associated or subsidiary companies; any sub-license to third parties must be notified to the Design Office.

13.o Records

The Client shall keep proper records and books of account showing the total value of sale income received by the Client originating from the commercial manufacture of the Products and such books shall be kept separate from any records and books not relating to the Products and to be open at reasonable times upon prior agreement with the Client such agreement not to be unreasonably withheld or delayed to inspection by the Design Office or their duly authorized agent or representative on up to 2 occasions in any year who shall be entitled to take copies of or extracts from the same. In the event that such inspection or audit should reveal a discrepancy in the royalties paid from those payable under this Agreement, the Client shall immediately make up any shortfall. Should the discrepancy be in favor of the Client of more than 5%, the Client shall reimburse the Design Office in respect of any reasonable professional charges incurred for such audit or inspection.

14.o Design Credits

The Design Office asserts its right to be identified as the author of any design work or Products which have been created as a result of the Commissioned Work and any publication of that Commissioned Work relating to those Products shall bear a clear and distinctive credit to the Design Office as approved by the Design Office.

The Design Office's name shall not be registered in any way or used upon or in relation to any of the Commissioned Work, unless asserted as above or approved in advance by the Design Office in writing.

15.o Registration

The Design Office shall not have the responsibility for protecting the Design Office's intellectual property rights in any part of the world whether by way of registration or otherwise but the Client shall be entitled at its own expense to protect the intellectual property rights of the Design Office and to protect and exploit the Client's rights under the license granted as the Client deems necessary. The Client shall have the right but not the obligation to file, maintain, prosecute and litigate the intellectual property rights of the Design Office.

If any intellectual property rights arising in respect of the Commissioned Work are acquired from the Design Office by the Client, the Design Office shall, where reasonably requested assist in any application for registration of any such rights. The Client shall pay any costs incurred by the Design Office.

16.o Liability

The Client shall hold harmless, indemnify and defend the Design Office against all costs, claims, damages, expenses or other liabilities of whatsoever nature and howsoever incurred by or made against the Design Office in respect of all or any claims of whatsoever nature and howsoever, wheresoever and whensoever arising against the Design Office arising out or in relation to the design manufacture, sale and distribution of the Products (or any of them) by any party, save only to the Design Office having deliberately infringed the intellectual property rights of a third party.

The Client shall indemnify the Design Office in respect of any loss or damage (including costs and economic loss) that may be awarded or agreed to be paid to any third party or may be suffered by the Design Office as a result of any failure by the Client or its appointed parties to conform with the CDM Regulations.

The Client confirms that it is aware of its duties under the CDM Regulations and of all practical guidance issues issued by the Health and Safety Executive with respect to the requirements of these regulations.

17.o Legal Requirements

It is the Client's responsibility to ensure that the Commissioned Work complies with the laws of the country for which it is intended.

18.o Termination of Agreement

This Agreement between the Design Office and the Client shall terminate (a) if either party commits a breach of it and fails to remedy the breach within twenty-eight days after receiving notification in writing from the other party specifying the breach and requiring remedy, (b) if the other party commits any act of bankruptcy or commences any proceedings of winding up (other than for the purposes of amalgamation or reconstruction) or if an Administrator, Receiver or Liquidator is appointed for the whole or any part of the business of such party.

19.o Consequences of Termination

On termination of the Agreement or postponement of the commission, or any part of it, for any reason, the Design Office shall be entitled to full remuneration for any Commissioned Work undertaken to the date of termination or postponement, either based on the time involved up to the date of termination or postponement or the percentage due for the Commissioned Work completed by that date, whichever is the greater. In addition the Design Office shall be entitled to reimbursement for all reasonable costs and expenses incurred up to the date of termination or postponement.

Any licenses for the exploitation of the intellectual property rights granted to the Client or if the intellectual property rights in any of the Commissioned Work have been assigned to the Client, such licenses and/or rights shall, in the event of any such termination or postponement automatically revert to and shall be assigned to the Design Office and the Client shall sign all documents and do all such acts in order to fulfill the same.

20.o Resumed Commission

If the postponed commission is resumed without substantial alteration within a period of one year from the date of postponement, any fees paid shall rank as payments on account towards the final fee payable on completion of the

Commissioned Work. Where the commission has been postponed for a period exceeding one year and then resumed, any fees paid shall be regarded as final payment for the services originally rendered. The resumed commission shall be deemed to constitute a separate contract for which fees shall be re-negotiated.

21.o Interpretation

Any questions of interpretation arising out of these conditions of engagement may be referred by the Design Office or the Client to [the relevant adjudicating body dependent upon the jurisdiction concerned] for decision at any time, provided always that such decision is sought on a statement of undisputed facts and submitted jointly by both parties who undertake to accept the decision as final.

22.o Dispute Resolution

Where any difference, dispute or claim arising out of this Agreement ("Dispute") cannot be determined in accordance with the 'Interpretation' provisions above, the parties agree to resolve any Dispute including (a) those arising out of or relating to this Agreement, its execution, breach, or termination, (b) those arising out of any relationship of or between the parties hereto whether governed specifically by this Agreement or not, and (c) those based on contract, tort, or statute. Duly appointed representatives of each party shall meet at least once in person,

or via telephone if meeting in person is impractical, to attempt to resolve any such Dispute. If any Dispute is not resolved promptly, the parties may seek to enforce their respective rights in a court of law.

23.0 Governing Law

This Agreement will be governed and construed in accordance with [the law of the relevant jurisdiction].

24.0 Entire Agreement

This Agreement sets forth the entire understanding and agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements, understandings, discussions and writings concerning the subject matter hereof. Any modification or amendment of this Agreement shall be valid and take effect only if reduced to writing and signed by a duly authorized officer of each of the parties hereto. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. Executed signatures pages to this Agreement may be delivered by facsimile (including copy sent by e-mail) and such facsimiles or emails shall be deemed as if actual signature pages had been delivered.